

# Senate Study Bill 1135 - Introduced

SENATE FILE \_\_\_\_\_  
BY (PROPOSED COMMITTEE ON  
STATE GOVERNMENT BILL BY  
CHAIRPERSON DANIELSON)

## A BILL FOR

1 An Act relating to the possession, sale, transfer, purchase,  
2 and use of fireworks and providing penalties.  
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 100.1, subsection 4, paragraph b, Code  
2 2015, is amended to read as follows:

3 b. The storage, transportation, handling, and use of  
4 flammable liquids, combustibles, fireworks, and explosives;

5 Sec. 2. Section 100.1, Code 2015, is amended by adding the  
6 following new subsection:

7 NEW SUBSECTION. 8. To order the suspension of the use  
8 of consumer fireworks, display fireworks, or novelties, as  
9 described in section 727.2, if the fire marshal determines that  
10 the use of such devices would constitute a threat to public  
11 safety.

12 Sec. 3. NEW SECTION. 100.19 Consumer fireworks seller  
13 licensing — penalty.

14 1. As used in this section:

15 a. "APA 87-1" means the American pyrotechnics association  
16 standard 87-1, as published in December 2001.

17 b. "Community group" means a nonprofit entity that is open  
18 for membership to the general public which is exempt from  
19 federal income taxation pursuant to section 501(c)(3) of the  
20 Internal Revenue Code or a fraternal benefit society, as that  
21 term is defined in section 512B.3.

22 c. "First-class consumer fireworks" means the following  
23 consumer fireworks, as described in APA 87-1, chapter 3:

24 (1) Aerial shell kits and reloadable tubes.

25 (2) Chasers.

26 (3) Helicopter and aerial spinners.

27 (4) Firecrackers.

28 (5) Mine and shell devices.

29 (6) Missile-type rockets.

30 (7) Roman candles.

31 (8) Sky rockets and bottle rockets.

32 (9) Multiple tube devices under this paragraph "c" that are  
33 manufactured in accordance with APA 87-1, section 3.5.

34 d. "Retailer" means an individual or entity engaged in  
35 this state in the business of selling consumer fireworks, as

1 described in APA 87-1, chapter 3, on a retail basis.

2     *e. "Second-class consumer fireworks"* means the following  
3 consumer fireworks, as described in APA 87-1, chapter 3:

4     (1) Cone fountains.

5     (2) Cylindrical fountains.

6     (3) Flitter sparklers.

7     (4) Ground and hand-held sparkling devices, including  
8 multiple tube ground and hand-held sparkling devices that are  
9 manufactured in accordance with APA 87-1, section 3.5.

10    (5) Ground spinners.

11    (6) Illuminating torches.

12    (7) Toy smoke devices.

13    (8) Wheels.

14    (9) Wire or dipped sparklers.

15    2. *a.* The state fire marshal shall establish a consumer  
16 fireworks seller license. An application for a consumer  
17 fireworks seller license shall be made on a form provided  
18 by the state fire marshal. The state fire marshal shall  
19 adopt rules consistent with this section establishing minimum  
20 requirements for a retailer or community group to be issued a  
21 consumer fireworks seller license.

22    *b.* A person shall possess a consumer fireworks seller  
23 license under this section in order to sell consumer fireworks.

24    3. *a.* The state fire marshal shall establish a fee schedule  
25 for consumer fireworks seller licenses as follows:

26    (1) For a retailer who devotes fifty percent or more of  
27 the retailer's retail floor space to the sale or display of  
28 first-class consumer fireworks, an annual fee of four hundred  
29 dollars.

30    (2) For a retailer who devotes less than fifty percent of  
31 the retailer's retail floor space to the sale or display of  
32 first-class consumer fireworks, an annual fee of two hundred  
33 dollars.

34    (3) For a community group that offers for sale, exposes for  
35 sale, or sells first-class consumer fireworks, an annual fee

1 of two hundred dollars.

2 (4) For a retailer or community group that offers for sale,  
3 exposes for sale, or sells second-class consumer fireworks,  
4 but not first-class consumer fireworks, an annual fee of  
5 twenty-five dollars.

6 b. A license issued to a retailer or community group  
7 pursuant to paragraph "a", subparagraph (1), (2), or (3), shall  
8 allow the licensee to sell both first-class consumer fireworks  
9 and second-class consumer fireworks.

10 4. The state fire marshal shall adopt rules to:

11 a. Require that any retailer or community group offering  
12 for sale at retail any consumer fireworks, as described in APA  
13 87-1, chapter 3, shall do so in accordance with the national  
14 fire protection association standard 1124, published in the  
15 code for the manufacture, transportation, storage, and retail  
16 sales of fireworks and pyrotechnic articles, 2006 edition.

17 b. Require that a retailer or community group to be issued a  
18 license pursuant to this section provide proof of and maintain  
19 public liability insurance and product liability insurance  
20 with minimum per occurrence coverage of at least five million  
21 dollars.

22 c. Permit a retailer or community group issued a license  
23 pursuant to this section to sell consumer fireworks, as  
24 described in APA 87-1, chapter 3, at the following locations  
25 as specified:

26 (1) At a permanent building that meets the requirements of  
27 paragraph "a", year-round.

28 (2) At a temporary structure that meets the requirements of  
29 paragraph "a" between June 13 and July 11 each year.

30 d. A retailer or community group shall not transfer consumer  
31 fireworks, as described in APA 87-1, chapter 3, to a person who  
32 is under eighteen years of age.

33 5. a. The state fire marshal shall adopt rules to provide  
34 that a person's consumer fireworks seller license may be  
35 revoked for the intentional violation of this section. The

1 proceedings for revocation shall be held before the division  
2 of the state fire marshal, which may revoke the license or  
3 licenses involved as provided in paragraph "b".

4     *b.* (1) If, upon the hearing of the order to show cause,  
5 the division of the state fire marshal finds that the licensee  
6 intentionally violated this section, then the license or  
7 licenses under which the licensed retailer or community group  
8 sells first-class consumer fireworks or second-class consumer  
9 fireworks, shall be revoked.

10     (2) Judicial review of actions of the division of the  
11 state fire marshal may be sought in accordance with the terms  
12 of the Iowa administrative procedure Act, chapter 17A. If  
13 the licensee has not filed a petition for judicial review in  
14 district court, revocation shall date from the thirty-first  
15 day following the date of the order of the division of the  
16 state fire marshal. If the licensee has filed a petition for  
17 judicial review, revocation shall date from the thirty-first  
18 day following entry of the order of the district court, if  
19 action by the district court is adverse to the licensee.

20     (3) A new license or shall not be issued to a person whose  
21 license has been revoked, or to the business in control of the  
22 premises on which the violation occurred if it is established  
23 that the owner of the business had actual knowledge of the  
24 violation resulting in the license revocation, for the period  
25 of one year following the date of revocation.

26     6. *a.* A consumer fireworks seller license fee fund is  
27 created in the state treasury under the control of the state  
28 fire marshal. Notwithstanding section 12C.7, interest or  
29 earnings on moneys in the consumer fireworks seller license fee  
30 fund shall be credited to the consumer fireworks seller license  
31 fee fund. Moneys in the fund are appropriated to the state  
32 fire marshal to be used to fulfill the responsibilities of  
33 the state fire marshal for the administration and enforcement  
34 of this section and to provide grants pursuant to paragraph  
35 "b". The fund shall include the fees collected by the state

1 fire marshal under the fee schedule established pursuant to  
2 subsection 3.

3     **b.** The state fire marshal shall establish a local fire  
4 protection and emergency medical service providers grant  
5 program to provide grants to local fire protection service  
6 providers and local emergency medical service providers to  
7 establish or provide fireworks safety education programming  
8 to members of the public. The state fire marshal may also  
9 provide grants to local fire protection service providers and  
10 local emergency medical service providers for the purchase  
11 of necessary enforcement, protection, or emergency response  
12 equipment related to the sale and use of consumer fireworks in  
13 this state.

14     7. The state fire marshal shall adopt rules for the  
15 administration of this section.

16     8. A person who violates a provision of this section or a  
17 rule adopted pursuant to this section is guilty of a simple  
18 misdemeanor.

19     Sec. 4. Section 101A.1, subsection 3, Code 2015, is amended  
20 to read as follows:

21     3. "*Explosive*" means any chemical compound, mixture  
22 or device, the primary or common purpose of which is to  
23 function by explosion with substantially instantaneous  
24 release of gas and heat, unless such compound, mixture, or  
25 device is otherwise specifically classified by the United  
26 States department of transportation. The term "*explosive*"  
27 includes all materials which are classified as a class 1,  
28 division 1.1, 1.2, 1.3, or 1.4 explosive by the United States  
29 department of transportation, under 49 C.F.R. §173.50, and all  
30 materials classified as explosive materials under 18 U.S.C.  
31 §841, and includes, but is not limited to, dynamite, black  
32 powder, pellet powders, initiating explosives, blasting caps,  
33 electric blasting caps, safety fuse, fuse lighters, fuse  
34 igniters, squibs, cordeau detonative fuse, instantaneous fuse,  
35 igniter cord, igniters, smokeless propellant, cartridges for

1 propellant-actuated power devices, cartridges for industrial  
2 guns, and overpressure devices, but does not include ~~"fireworks"~~  
3 ~~as~~ "consumer fireworks", "display fireworks", or "novelties" as  
4 those terms are defined in section 727.2 or ammunition or small  
5 arms primers manufactured for use in shotguns, rifles, and  
6 pistols. Commercial explosives are those explosives which are  
7 intended to be used in commercial or industrial operations.

8 Sec. 5. Section 331.301, Code 2015, is amended by adding the  
9 following new subsection:

10 NEW SUBSECTION. 17. The board of supervisors may by  
11 resolution suspend the use of display fireworks, as described  
12 in section 727.2, if the board determines that the use of such  
13 devices would constitute a threat to public safety.

14 Sec. 6. Section 331.304, subsection 9, Code 2015, is amended  
15 to read as follows:

16 9. The board, upon application, may grant permits for the  
17 ~~display use of display~~ fireworks as provided in section 727.2.

18 Sec. 7. Section 461A.42, subsection 2, Code 2015, is amended  
19 to read as follows:

20 2. The use of consumer fireworks, display fireworks, and  
21 novelties, as defined in section 727.2, in state parks and  
22 preserves is prohibited except as authorized by a permit issued  
23 by the department. The commission shall establish, by rule  
24 adopted pursuant to chapter 17A, a fireworks permit system  
25 which authorizes the issuance of a limited number of permits to  
26 qualified persons to use or display fireworks in selected state  
27 parks and preserves.

28 Sec. 8. Section 727.2, Code 2015, is amended to read as  
29 follows:

30 **727.2 Fireworks.**

31 1. Definitions. For purposes of this section:

32 a. "Consumer fireworks" includes first-class consumer  
33 fireworks and second-class consumer fireworks as those terms  
34 are defined in section 100.19, subsection 1.

35 b. The term "fireworks" "Display fireworks" includes any

1 explosive composition, or combination of explosive substances,  
 2 or article prepared for the purpose of producing a visible  
 3 or audible effect by combustion, explosion, deflagration,  
 4 or detonation, and includes ~~blank cartridges, firecrackers,~~  
 5 ~~torpedoes, skyrockets, roman candles, or other fireworks of~~  
 6 ~~like construction and~~ fireworks containing any explosive or  
 7 flammable compound, or other device containing any explosive  
 8 substance. ~~The term "fireworks"~~ "Display fireworks" does not  
 9 include ~~goldstar-producing sparklers on wires which contain~~  
 10 ~~no magnesium or chlorate or perchlorate, flitter sparklers~~  
 11 ~~in paper tubes that do not exceed one-eighth of an inch in~~  
 12 ~~diameter, toy snakes which contain no mercury, or caps used~~  
 13 ~~in cap pistols~~ novelties or consumer fireworks enumerated in  
 14 chapter 3 of the American pyrotechnics association's standard  
 15 87-1.

16 c. "Novelties" includes all novelties enumerated in chapter  
 17 3 of the American pyrotechnics association's standard 87-1, and  
 18 that comply with the labeling regulations promulgated by the  
 19 United States consumer product safety commission.

20 2. Display fireworks.

21 a. A person, firm, partnership, or corporation who offers  
 22 for sale, exposes for sale, sells at retail, or uses or  
 23 explodes any display fireworks, commits a simple misdemeanor.  
 24 ~~In addition to any other penalties, the punishment imposed~~  
 25 ~~for a violation of this section shall include assessment~~  
 26 ~~of, punishable by~~ a fine of not less than two hundred fifty  
 27 dollars. However, ~~the~~ a city council of a city or a county  
 28 board of supervisors may, upon application in writing, grant a  
 29 permit for the display of display fireworks by municipalities,  
 30 fair associations, amusement parks, and other organizations  
 31 or groups of individuals approved by the city or the county  
 32 board of supervisors when the display fireworks ~~display~~ will  
 33 be handled by a competent operator, but no such permit shall  
 34 be required for the display of display fireworks at the Iowa  
 35 state fairgrounds by the Iowa state fair board, at incorporated



1 county fairs, or at district fairs receiving state aid. Sales  
2 of display fireworks for such display may be made for that  
3 purpose only.

4 b. (1) A person who uses or explodes display fireworks  
5 while the use of such devices is suspended by a resolution  
6 adopted by the county in which the firework is used commits a  
7 simple misdemeanor, punishable by a fine of not less than two  
8 hundred fifty dollars.

9 (2) A person who uses or explodes display fireworks while  
10 the use of such devices is suspended by an order of the state  
11 fire marshal commits a simple misdemeanor, punishable by a fine  
12 of not less than two hundred fifty dollars.

13 3. Consumer fireworks and novelties.

14 a. A person or a firm, partnership, or corporation may  
15 possess, use, or explode consumer fireworks in accordance with  
16 this subsection and subsection 4.

17 b. A person, firm, partnership, or corporation who sells  
18 consumer fireworks to a person who is less than eighteen years  
19 of age commits a simple misdemeanor, punishable by a fine of  
20 not less than two hundred fifty dollars. A person who is less  
21 than eighteen years of age who purchases consumer fireworks  
22 commits a simple misdemeanor, punishable by a fine of not less  
23 than two hundred fifty dollars.

24 c. A person who uses or explodes consumer fireworks or  
25 novelties while the use of such devices is suspended by an  
26 order of the state fire marshal commits a simple misdemeanor,  
27 punishable by a fine of not less than two hundred fifty  
28 dollars.

29 4. Limitations.

30 a. A person shall not use or explode consumer fireworks at  
31 times other than between the hours of 9:00 a.m. and 10:00 p.m.,  
32 except that on the following dates consumer fireworks shall not  
33 be used at times other than between the hours of 9:00 a.m. and  
34 12:30 a.m. on the immediately following day:

35 (1) Memorial Day and the Saturday and Sunday immediately

1 preceding that day.

2 (2) July 4 and the Saturdays and Sundays immediately  
3 preceding and following July 4.

4 (3) Labor Day and the Saturday and Sunday immediately  
5 preceding that day.

6 (4) December 31 and the Saturdays and Sundays immediately  
7 preceding and following December 31.

8 b. A person shall not use consumer fireworks on real  
9 property other than that person's real property or on the real  
10 property of a person who has consented to the use of consumer  
11 fireworks on that property.

12 c. A person who violates this subsection commits a simple  
13 misdemeanor punishable by a fine of not less than fifty dollars  
14 and not more than five hundred dollars.

15 3- 5. Applicability.

16 a. This section does not prohibit the sale by a resident,  
17 dealer, manufacturer, or jobber of such fireworks as are  
18 not prohibited by this section, or the sale of any kind of  
19 fireworks if they are to be shipped out of the state, or the  
20 sale or use of blank cartridges for a show or the theater,  
21 or for signal purposes in athletic sports or by railroads  
22 or trucks, for signal purposes, or by a recognized military  
23 organization.

24 b. This section does not apply to any substance or  
25 composition prepared and sold for medicinal or fumigation  
26 purposes.

27 c. Unless specifically provided otherwise, this section does  
28 not apply to novelties.

29 Sec. 9. EFFECTIVE DATE. This Act takes effect June 1, 2015.

30 EXPLANATION

31 The inclusion of this explanation does not constitute agreement with  
32 the explanation's substance by the members of the general assembly.

33 This bill provides for the legal sale and use of novelties  
34 and consumer fireworks within the state.

35 The bill provides that the state fire marshal has the duty to

1 enforce all laws, and rules of the department of public safety  
2 concerned with the storage, transportation, handling, and use  
3 of fireworks.

4 Current law provides that a person, firm, partnership, or  
5 corporation who offers for sale, exposes for sale, sells at  
6 retail, or uses or explodes any fireworks, commits a simple  
7 misdemeanor. Current law, however, also provides that a county  
8 board of supervisors or the department of natural resources may  
9 grant a permit for the display of fireworks if the fireworks  
10 display will be handled by a competent operator. Current  
11 law further provides that the term "fireworks" includes any  
12 explosive composition, or combination of explosive substances,  
13 or article prepared for the purpose of producing a visible  
14 or audible effect by combustion, explosion, deflagration,  
15 or detonation, including blank cartridges, firecrackers,  
16 torpedoes, skyrockets, roman candles, or other fireworks of  
17 like construction and fireworks containing any explosive or  
18 flammable compound, or other device containing any explosive  
19 substance with limited exceptions.

20 The bill maintains these restrictions for display fireworks  
21 and provides that the term "display fireworks" shall not  
22 include novelties or consumer fireworks. The bill provides  
23 definitions for the terms "novelties" and "consumer fireworks".

24 The bill requires that the state fire marshal establish  
25 a consumer fireworks seller license, and requires possession  
26 of such a license to legally sell consumer fireworks in this  
27 state. The state fire marshal is required to establish a fee  
28 schedule for consumer fireworks seller licenses. The bill  
29 establishes two classes of consumer fireworks and requires  
30 a \$400 annual licensing fee for a retailer who devotes 50  
31 percent or more of the retailer's retail floor space to the  
32 sale or display of first-class consumer fireworks. Retailers  
33 who devote less than 50 percent of the retailer's retail  
34 floor space to the sale or display of first-class consumer  
35 fireworks are required to pay an annual licensing fee of \$200.

1 A community group that sells first-class consumer fireworks  
2 is required to pay an annual licensing fee of \$200. The  
3 bill requires an annual licensing fee of \$25 for retailers  
4 or community groups that sell only second-class consumer  
5 fireworks.

6 The bill requires that the state fire marshal adopt rules  
7 to require that licensed retailers and community groups only  
8 offer consumer fireworks for sale in accordance with specified  
9 industry standards. The bill also requires that retailers and  
10 community groups provide proof of and maintain public liability  
11 and public liability insurance. Under the bill, the state fire  
12 marshal is required to adopt rules to permit licensed retailers  
13 and community groups to sell consumer fireworks at conforming  
14 permanent buildings on a year-round basis and at conforming  
15 temporary structures from June 13 to July 11 each year.

16 The bill also provides for the revocation of a consumer  
17 fireworks seller license for the intentional violation of  
18 licensing requirements. The bill establishes procedures  
19 for the revocation of such licenses and procedures for  
20 review for such revocations. The bill also establishes a  
21 consumer fireworks seller license fee fund under the control  
22 of the state fire marshal. The fund shall consist of the  
23 fees collected for the licensing of retailers and community  
24 groups. The fund is required to be used for administration  
25 and enforcement of the state fire marshal's consumer fireworks  
26 related duties and to provide grants to local fire protection  
27 and emergency medical service providers.

28 Under the bill, a violation of a licensing provision  
29 established in Code or by rule is considered a simple  
30 misdemeanor. A simple misdemeanor is punishable by confinement  
31 for no more than 30 days or a fine of at least \$65 but not more  
32 than \$625, or by both.

33 The bill provides that a person or a firm, partnership, or  
34 corporation may possess consumer fireworks as provided in the  
35 bill. The bill provides that a person, firm, partnership, or

1 corporation who sells any consumer firework to a person who  
2 is less than 18 years of age commits a simple misdemeanor.  
3 A person who is less than 18 years of age who purchases any  
4 consumer fireworks commits a simple misdemeanor. A simple  
5 misdemeanor is generally punishable by confinement for no more  
6 than 30 days or a fine of at least \$65 but not more than \$625 or  
7 by both, but the bill provides for a fine of at least \$250.

8 The bill provides that the state fire marshal may order the  
9 suspension of the use of consumer fireworks, display fireworks,  
10 or novelties if the fire marshal determines that the use of  
11 such devices would constitute a threat to public safety. The  
12 bill also provides that a county board of supervisors may adopt  
13 a resolution to suspend the use of display fireworks. The bill  
14 provides that a person who violates such an order by the state  
15 fire marshal or resolution of a county board of supervisors  
16 commits a simple misdemeanor, punishable by a fine of at least  
17 \$250.

18 The bill also provides certain restrictions on the use  
19 or explosion of consumer fireworks. The bill prohibits the  
20 use or explosion of consumer fireworks at a time other than  
21 between the hours of 9:00 a.m. and 10:00 p.m., except on  
22 Memorial Day, the 4th of July, Labor Day, and New Year's Eve,  
23 and weekend days near such holidays. On specified days, the  
24 use or explosion of consumer fireworks is prohibited except  
25 between the hours of 9:00 a.m. and 12:30 a.m. on the following  
26 day. The bill further prohibits the use of fireworks by a  
27 person on the real property of another person unless the owner  
28 of the real property has consented to such use. Under the  
29 bill, a violation of these restrictions is considered a simple  
30 misdemeanor punishable by a fine of not less than \$50 and not  
31 more than \$500.

32 The bill will take effect June 1, 2015.